

## REMARKS

Claims 1-30 remain pending in the instant application. All claims presently stand rejected. Claims 1, 17 and 27 are amended herein. Entry of this amendment and reconsideration of the pending claims are respectfully requested.

### *Specification*

Applicants have corrected the specification to cure some minor typographical errors included in paragraph [0061]. These corrections are believed to introduce no new matter.

### *Claim Rejections – 35 U.S.C. § 101*

Claims 17-26 stand rejected under 35 U.S.C. §101 as reciting non-statutory subject matter because of Applicants' paragraph [0074] which recites "a machine-readable medium may include propagated signals such as electrical, optical, acoustical or other form of propagated signals (e.g., carrier waves, infrared signals, digital signals, etc.)." Accordingly, Applicants have amended claim 17 to limit the machine readable medium to "tangible" machine readable mediums. Thus, Applicants respectfully submit that claims 17-26 are properly directed to statutory subject matter as required under 35 U.S.C. §101 and request that the §101 rejections be withdrawn.

### *Claim Rejections – 35 U.S.C. §102*

Claims 1-4, 9-14, 16-18, 24, 25, 27, 28 and 30 stand rejected under 35 U.S.C. §102(e) as being anticipated by Hind (US 6,976,163).

A claim is anticipated only if each and every element of the claim is found in a single reference. M.P.E.P §2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987)). "The identical invention must be shown in as complete detail as is contained in the claim." M.P.E.P. §2131 (citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989)).

Claim 1, as amended, recites:

A method, comprising:  
issuing, via a caller computer, a request to have a firmware service  
be performed via **firmware stored on a remote computer**;  
authenticating the caller computer; and  
performing the firmware service if the caller computer is  
authenticated, otherwise denying access to the firmware service, wherein  
performing the firmware service comprises **executing program code  
included in the firmware under control of the caller computer**.

[**Emphasis added**]. Applicants respectfully assert that Hind fails to disclose issuing a request to have a firmware service performed via firmware stored on a remote computer and executing program code included in that firmware under control of a caller computer, as is more fully explained below.

Hind generally discloses methods which include updating firmware based on rules provided as extensions of digital certificates. Hind, Abstract. Specifically, Hind discloses obtaining an update image and a certificate associated with the update image. Hind discloses that rules are extracted from the certificate and that programmable memory is updated based on the update image and the extracted rules. Hind, Col. 2, lines 43-52.

In contrast, Applicants' claim 1 includes issuing a request to have a firmware service performed via firmware already stored on a remote computer. Furthermore, Claim 1 has been amended to further recite that performing the firmware service comprises executing program code included in the firmware under control of the caller computer. To be sure, Applicants disclose that in one embodiment, a Trusted Remote Firmware Interface (TRFI) allows one to exercise program code in the firmware environment of a remote computer under the direct control of another trusted computer via a predefined interface. Applicants further disclose that, in one embodiment, a caller computer now has the ability to access data and initiate firmware services (i.e., requested tasks) of a remote machine. Specification, [0017].

Since Hind discloses updating firmware, it fails to disclose issuing a request to have a firmware service performed via firmware stored on a remote computer, where performing the firmware service comprises executing program code under control of the

caller computer. Consequently, Hind fails to disclose each and every element of claim 1, as required under M.P.E.P. §2131. Independent claims 17 and 27, as amended, include similar novel elements as independent claim 1.

Furthermore, independent claim 17 has been further amended to recite, in pertinent part, "...wherein the request is received via an **out-of-band communication channel** that operates independent of an operating system run by the processor...". Applicants respectfully assert that Hind also fails to disclose this expressly recited element.

In the rejection of claim 16, the Office Action cites to column 6, lines 4-19 to allegedly show an out-of-band communications channel that operates independent of an operating system. Applicants respectfully disagree. This cited portion of Hind is reproduced below for Examiner's convenience:

Computer program code for carrying out operations of the present invention may be written in an object oriented programming language such as Java@, Smalltalk or C++. However, the computer program code for carrying out operations of the present invention may also be written in conventional procedural programming languages, such as the "C" programming language or even assembly language. The program code may execute entirely on the user's computer, partly on the user's computer, as a stand-alone software package, partly on the user's computer and partly on a remote computer or entirely on the remote computer. In the latter scenario, the remote computer may be connected to the user's computer through a local area network (LAN) or a wide area network (WAN), or the connection may be made to an external computer (for example, through the Internet using an Internet Service Provider).

Applicants respectfully assert that this portion of Hind is reciting programming languages (e.g., Java@, Smalltalk, C++, etc.) in which the computer program code of Hind may be written and the locations (e.g., user's computer, remote computer, or combination) where the code may be executed. Hind, including the cited portion, simply fails to disclose an out-of-band communications channel that operates independent of an operating system, as expressly claimed by Applicants. Thus, independent claim 17 is further novel over Hind for at least these reasons in addition to the reasons discussed above.

The dependent claims are novel over Hind for at least the same reasons as discussed above in connection with their respective independent claims, in addition to adding further limitations of their own. Accordingly, Applicants respectfully request that the instant §102 rejections of claims 1-4, 9-14, 16-18, 24, 25, 27, 28 and 30 be withdrawn.

#### *Claim Rejections – 35 U.S.C. § 103*

Claims 5-8, 15, 19-23, 26 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hind in view of Hsu (US 2005/0081036).

“A 35 U.S.C. 103 rejection is based on 35 U.S.C. 102(a), 102(b), 102(e), etc. depending on the type of prior art reference used and its publication or issue date.” M.P.E.P §2141.01(I).

Applicants kindly remind the Examiner that a §103 reference must first qualify as prior art under, at least, one of the sub-sections set forth in 35 U.S.C. §102. The §103 rejections set forth in the Office Action mailed 12/21/2006, cite to the Hsu reference, but Hsu does not qualify as prior art under any of the sub-sections of §102. For example, the Hsu publication indicates a filing date of August 6, 2004 and a publication date of April 14, 2005. Applicants' filing date of **August 21, 2003** pre-dates either of these Hsu dates. Thus, Hsu cannot be relied upon to preclude patentability.

Furthermore, M.P.E.P §2143.03 provides that if an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. Consequently, claims 5-8, 15, 19-23, 26 and 29 are nonobvious over the prior art of record for at least the same reasons as discussed above in connection with their respective independent claims, in addition to adding further limitations of their own. Accordingly, Applicants respectfully request that the instant §103 rejections of claims 5-8, 15, 19-23, 26 and 29 be withdrawn.

#### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicants believe the applicable rejections have been overcome and all claims remaining in the application are

presently in condition for allowance. Accordingly, favorable consideration and a Notice of Allowance are earnestly solicited. The Examiner is invited to telephone the undersigned representative at (206) 292-8600 if the Examiner believes that an interview might be useful for any reason.

### CHARGE DEPOSIT ACCOUNT

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a). Any fees required therefore are hereby authorized to be charged to Deposit Account No. 02-2666. Please credit any overpayment to the same deposit account.

Respectfully submitted,

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